

AMENDED IN SENATE MAY 18, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 689

Introduced by Assembly Member Dodd

February 25, 2015

An act to amend ~~Sections 27581.2 and~~ *Section 27581.4* of, and to add Sections 27581.1, 27583, 27583.2, 27583.4, 27584, and 27585 to, the Food and Agricultural Code, relating to eggs.

LEGISLATIVE COUNSEL’S DIGEST

AB 689, as amended, Dodd. Marketing of eggs: violations: ~~civil actions: civil~~ penalties.

Existing law establishes a regulatory scheme for the marketing of shell eggs, and requires egg producers and egg handlers to register with the Secretary of Food and Agriculture. A violation of those provisions or regulations adopted pursuant to those provisions is unlawful, and for certain violations, punishable as a misdemeanor. Existing law also authorizes the secretary, in lieu of seeking prosecution for the violation, to bring a civil action for up to \$1,000 for the violation.

This bill would increase that amount to \$10,000 *and would also authorize a county agricultural commissioner to bring a civil action.* The bill would also authorize *the secretary or* a county agricultural commissioner, in lieu of prosecution, to levy ~~a civil~~ *an administrative* penalty of up to \$10,000 for a violation of those provisions. *The bill would require the secretary, on or before July 1, 2016, to adopt regulations classifying violations of these egg provisions as either “minor,” “moderate,” or “serious,” with different penalty ranges applicable to each classification, as specified, and would apply these amounts to both civil liability penalties and administrative penalties.*

The bill would set forth notice and other procedural requirements for bringing and resolving an *administrative* action pursuant to those provisions, and would require the funds recovered by the county agricultural commissioner to be deposited in the county's general fund.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 27581.2 of the Food and Agricultural~~
2 ~~Code is amended to read:~~

3 ~~27581.2. (a) In lieu of seeking prosecution of any violation of~~
4 ~~this chapter, or the regulations adopted pursuant to this chapter,~~
5 ~~as a misdemeanor pursuant to Section 27671, the secretary may~~
6 ~~bring a civil action pursuant to Sections 27581 and 27581.4.~~

7 ~~(b) The person charged with the violation shall be notified of~~
8 ~~the proposed action. The notice shall include the nature of the~~
9 ~~violation, the amount of the proposed penalty, the right to request~~
10 ~~a hearing to appeal the civil action, and the right to judicial review~~
11 ~~of the decision within 30 days of the date of the decision, pursuant~~
12 ~~to Section 1094.5 of the Code of Civil Procedure.~~

13 ~~(c) The secretary shall send a copy of the notice of the proposed~~
14 ~~action to the commissioner of the county in which the violation~~
15 ~~took place at the same time notice is sent pursuant to subdivision~~
16 ~~(b). Additionally, the secretary shall inform the commissioner of~~
17 ~~the county in which the action was initiated of violations for which~~
18 ~~a penalty has been assessed.~~

19 ~~SECTION 1. Section 27581.1 is added to the Food and~~
20 ~~Agricultural Code, to read:~~

21 ~~27581.1. (a) On or before July 1, 2016, the secretary shall~~
22 ~~adopt regulations classifying certain violations of this chapter, or~~
23 ~~any regulation adopted pursuant to this chapter, as "minor,"~~
24 ~~subject to a penalty from fifty dollars (\$50) to four hundred dollars~~
25 ~~(\$400), inclusive, certain violations as "moderate," subject to a~~
26 ~~penalty from four hundred one dollars (\$401) to one thousand~~
27 ~~dollars (\$1,000), inclusive, and certain violations as "serious,"~~
28 ~~subject to a penalty from one thousand one dollars (\$1,001) to ten~~
29 ~~thousand dollars (\$10,000), inclusive.~~

1 ***(b) The penalty schedule described in this section shall apply***
2 ***to civil liability penalties imposed pursuant to Section 27581.4***
3 ***and administrative penalties imposed pursuant to Section 27583.***

4 SEC. 2. Section 27581.4 of the Food and Agricultural Code is
5 amended to read:

6 27581.4. (a) The secretary, or a commissioner for violations
7 in his or her county, may bring a civil action against any person
8 who violates this chapter or any regulation adopted pursuant to
9 this chapter, and any person who commits that violation is liable
10 civilly in an amount not to exceed ten thousand dollars (\$10,000).
11 *The court shall set the civil liability imposed on a violator of this*
12 *chapter, or any regulation adopted pursuant to this chapter, in*
13 *accordance with the penalty schedule adopted by the secretary*
14 *pursuant to Section 27581.1.*

15 (b) Any money recovered by the secretary under this section
16 shall be deposited in the Department of Food and Agriculture Fund
17 for use by the department in administering this chapter, when
18 appropriated to the department for that purpose.

19 (c) Any money recovered by a ~~county agricultural~~ commissioner
20 under this section shall be deposited in the county's general fund.

21 SEC. 3. Section 27583 is added to the Food and Agricultural
22 Code, to read:

23 27583. (a) In lieu of prosecution, the *secretary or the*
24 *commissioner may levy a civil penalty an administrative penalty,*
25 *in an amount not to exceed ten thousand dollars (\$10,000) and in*
26 *accordance with Section 27583.2 or Section 27583.4, as applicable,*
27 against a person who violates this chapter or any regulation
28 implemented pursuant to this chapter. *An administrative penalty*
29 *levied pursuant to this section shall be set in accordance with the*
30 *penalty schedule adopted by the secretary pursuant to Section*
31 *27581.1.*

32 (b) "Person," as used in this section, means anyone engaged in
33 the business of producing, candling, grading, packing, or otherwise
34 preparing shell eggs for market or who engages in the operation
35 of selling or marketing eggs that he or she has produced, purchased,
36 or acquired from a producer, or which he or she is marketing on
37 behalf of a producer, whether as owner, agent, employee, or
38 otherwise pursuant to this chapter.

39 ~~(e) (1) Before a civil penalty is levied, the person charged with~~
40 ~~the violation shall receive written notice of the proposed action~~

1 including the nature of the violation and the amount of the proposed
2 penalty. The person shall have the right to request a hearing within
3 20 days after receiving notice of the proposed action. A notice that
4 is sent by certified mail to the last known address of the person
5 charged shall be considered received even if delivery is refused
6 or if the notice is not accepted at that address. If a hearing is
7 requested, notice of the time and place of the hearing shall be given
8 at least 10 days before the date set for the hearing. At the hearing,
9 the person shall be given an opportunity to review the
10 commissioner's evidence and to present evidence on his or her
11 own behalf. If a hearing is not timely requested, the commissioner
12 may take the action proposed without a hearing.

13 (2) The commissioner shall send a copy of the notice of the
14 proposed action to the secretary at the same time notice is sent to
15 the person charged with the violation.

16 (d) If the person, upon whom the commissioner levied a civil
17 penalty, requested and appeared at a hearing, the person may appeal
18 the commissioner's decision to the secretary within 30 days of the
19 date of receiving a copy of the commissioner's decision. The
20 following procedures apply to the appeal:

21 (1) The appeal shall be in writing and signed by the appellant
22 or his or her authorized agent, states the grounds for the appeal,
23 and includes a copy of the commissioner's decision. The appellant
24 shall file a copy of the appeal with the commissioner at the same
25 time it is filed with the secretary.

26 (2) The appellant and the commissioner, at the time of filing
27 the appeal or within 10 days thereafter or at a later time prescribed
28 by the secretary, may present the record of the hearing and a written
29 argument to the secretary stating the ground for affirming,
30 modifying, or reversing the commissioner's decision.

31 (3) The secretary may grant oral arguments upon application
32 made at the time written arguments are filed.

33 (4) If an application to present an oral argument is granted,
34 written notice of the time and place for the oral argument shall be
35 given at least 10 days before the date set for oral argument. The
36 times may be altered by mutual agreement of the appellant, the
37 commissioner, and the secretary.

38 (5) The secretary shall decide the appeal on the record of the
39 hearing, including the written evidence and the written argument
40 described in paragraph (2), that he or she has received. If the

1 ~~secretary finds substantial evidence in the record to support the~~
2 ~~commissioner's decision, the secretary shall affirm the decision.~~

3 ~~(6) The secretary shall render a written decision within 45 days~~
4 ~~of the date of appeal or within 15 days of the date of oral arguments~~
5 ~~or as soon thereafter as practical.~~

6 ~~(7) On an appeal pursuant to this section, the secretary may~~
7 ~~affirm the commissioner's decision, modify the commissioner's~~
8 ~~decision by reducing or increasing the amount of the penalty levied~~
9 ~~so that it is within the secretary's guidelines for imposing civil~~
10 ~~penalties, or reverse the commissioner's decision. Any civil penalty~~
11 ~~increased by the secretary shall not be higher than that proposed~~
12 ~~in the commissioner's notice of proposed action given pursuant~~
13 ~~to subdivision (c). A copy of the secretary's decision shall be~~
14 ~~delivered or mailed to the appellant and the commissioner.~~

15 ~~(8) Any person who does not request a hearing with the~~
16 ~~commissioner pursuant to a penalty assessed under subdivision~~
17 ~~(c) may not file an appeal to the secretary pursuant to this~~
18 ~~subdivision.~~

19 ~~(9) Review of a decision of the secretary may be sought by the~~
20 ~~appellant within 30 days of the date of the decision pursuant to~~
21 ~~Section 1094.5 of the Code of Civil Procedure.~~

22 ~~(e) After the exhaustion of the appeal and review of procedures~~
23 ~~provided in this section, the commissioner, or his or her~~
24 ~~representative, may file a certified copy of a final decision of the~~
25 ~~commissioner that directs the payment of a civil penalty, and, if~~
26 ~~applicable, a copy of any decision of the secretary, or his or her~~
27 ~~authorized representative, rendered on an appeal from the~~
28 ~~commissioner's decision and a copy of any order that denies a~~
29 ~~petition for a writ of administrative mandamus, with the clerk of~~
30 ~~the superior court of any county. Judgment shall be entered~~
31 ~~immediately by the clerk in conformity with the decision or order.~~
32 ~~No fees shall be charged by the clerk of the superior court for the~~
33 ~~performance of any official service required in connection with~~
34 ~~the entry of judgment pursuant to this section.~~

35 ~~(f) If the person fails to pay the penalty and fails to timely file~~
36 ~~a written appeal, the commissioner may take the action described~~
37 ~~in subdivision (e).~~

38 ~~(g) In addition to the civil penalties, the appellant may be~~
39 ~~required to cover the cost of the administrative hearing unless the~~
40 ~~decision of the secretary or commissioner is overturned.~~

1 ~~(h) Revenues from civil penalties levied by the commissioner~~
2 ~~shall be deposited in the general fund of the county and, upon~~
3 ~~appropriation by the board of supervisors, shall be used by the~~
4 ~~commissioner to carry out his or her responsibilities under this~~
5 ~~chapter. The commissioner shall inform the secretary of any~~
6 ~~violations for which a penalty has been assessed.~~

7 SEC. 4. Section 27583.2 is added to the Food and Agricultural
8 Code, to read:

9 27583.2. If the secretary levies an administrative penalty
10 pursuant to Section 27583, the following provisions shall apply:

11 (a) The person charged with the violation shall be notified of
12 the proposed action. The notice shall include the nature of the
13 violation, the amount of the proposed administrative penalty, the
14 right to request a hearing to appeal the administrative action, and
15 the right to judicial review of the decision within 30 days of the
16 date of the decision, pursuant to Section 1094.5 of the Code of
17 Civil Procedure.

18 (b) The secretary shall send a copy of the notice of the proposed
19 action to the commissioner of the county in which the violation
20 took place at the same time notice is sent pursuant to subdivision
21 (a). Additionally, the secretary shall inform the commissioner of
22 the county in which the action was initiated of violations for which
23 a penalty has been assessed.

24 SEC. 5. Section 27583.4 is added to the Food and Agricultural
25 Code, to read:

26 27583.4. If a commissioner levies an administrative penalty
27 pursuant to Section 27583, the following provisions shall apply:

28 (a) (1) Before an administrative penalty is levied, the person
29 charged with the violation shall receive written notice of the
30 proposed action including the nature of the violation and the
31 amount of the proposed penalty. The person shall have the right
32 to request a hearing within 20 days after receiving notice of the
33 proposed action. A notice that is sent by certified mail to the last
34 known address of the person charged shall be considered received
35 even if delivery is refused or if the notice is not accepted at that
36 address. If a hearing is requested, notice of the time and place of
37 the hearing shall be given at least 10 days before the date set for
38 the hearing. At the hearing, the person shall be given an
39 opportunity to review the commissioner's evidence and to present
40 evidence on his or her own behalf. If a hearing is not timely

1 requested, the commissioner may take the action proposed without
2 a hearing.

3 (2) The commissioner shall send a copy of the notice of the
4 proposed action to the secretary at the same time notice is sent to
5 the person charged with the violation.

6 (b) If the person, upon whom the commissioner levied an
7 administrative penalty, requested and appeared at a hearing, the
8 person may appeal the commissioner's decision to the secretary
9 within 30 days of the date of receiving a copy of the commissioner's
10 decision. The following procedures apply to the appeal:

11 (1) The appeal shall be in writing and signed by the appellant
12 or his or her authorized agent, state the grounds for the appeal,
13 and include a copy of the commissioner's decision. The appellant
14 shall file a copy of the appeal with the commissioner at the same
15 time it is filed with the secretary.

16 (2) The appellant and the commissioner, at the time of filing
17 the appeal, within 10 days thereafter, or at a later time prescribed
18 by the secretary, may present the record of the hearing and a
19 written argument to the secretary stating the ground for affirming,
20 modifying, or reversing the commissioner's decision.

21 (3) The secretary may grant oral arguments upon application
22 made at the time written arguments are filed.

23 (4) If an application to present an oral argument is granted,
24 written notice of the time and place for the oral argument shall be
25 given at least 10 days before the date set for oral argument. The
26 times may be altered by mutual agreement of the appellant, the
27 commissioner, and the secretary.

28 (5) The secretary shall decide the appeal on the record of the
29 hearing, including the written evidence and the written argument
30 described in paragraph (2), that he or she has received. If the
31 secretary finds substantial evidence in the record to support the
32 commissioner's decision, the secretary shall affirm the decision.

33 (6) The secretary shall render a written decision within 45 days
34 of the date of appeal or within 15 days of the date of oral
35 arguments or as soon thereafter as practical.

36 (7) On an appeal pursuant to this section, the secretary may
37 affirm the commissioner's decision, modify the commissioner's
38 decision by reducing or increasing the amount of the penalty levied
39 so that it is consistent with the penalty schedule described in
40 Section 27581.1, or reverse the commissioner's decision. An

1 administrative penalty increased by the secretary shall not be
2 higher than that proposed in the commissioner's notice of proposed
3 action given pursuant to subdivision (a). A copy of the secretary's
4 decision shall be delivered or mailed to the appellant and the
5 commissioner.

6 (8) Any person who does not request a hearing with the
7 commissioner pursuant to an administrative penalty assessed under
8 subdivision (a) shall not file an appeal to the secretary pursuant
9 to this subdivision.

10 (9) Review of a decision of the secretary may be sought by the
11 appellant within 30 days of the date of the decision pursuant to
12 Section 1094.5 of the Code of Civil Procedure.

13 (c) After the exhaustion of the appeal and review of procedures
14 provided in this section, the commissioner, or his or her
15 representative, may file a certified copy of a final decision of the
16 commissioner that directs the payment of an administrative penalty,
17 and, if applicable, a copy of any decision of the secretary, or his
18 or her authorized representative, rendered on an appeal from the
19 commissioner's decision and a copy of any order that denies a
20 petition for a writ of administrative mandamus, with the clerk of
21 the superior court of any county. Judgment shall be entered
22 immediately by the clerk in conformity with the decision or order.
23 No fees shall be charged by the clerk of the superior court for the
24 performance of any official service required in connection with
25 the entry of judgment pursuant to this section.

26 (d) If the person fails to pay the administrative penalty and fails
27 to timely file a written appeal, the commissioner may take the
28 action described in subdivision (c).

29 (e) In addition to the administrative penalties, the appellant
30 may be required to cover the cost of the administrative hearing
31 unless the decision of the secretary or commissioner is overturned.

32 (f) Revenues from administrative penalties levied by the
33 commissioner shall be deposited in the general fund of the county
34 and, upon appropriation by the board of supervisors, shall be used
35 by the commissioner to carry out his or her responsibilities under
36 this chapter. The commissioner shall inform the secretary of any
37 violations for which a penalty has been assessed.

38 ~~SEC. 4.~~

39 SEC. 6. Section 27584 is added to the Food and Agricultural
40 Code, to read:

1 27584. If a respondent in an administrative action agrees to
2 stipulate to the notice of proposed action, a signed stipulation with
3 the payment of the proposed administrative penalty shall be
4 returned to the commissioner or secretary, as applicable, within
5 45 days of the postmark of the notice of the proposed action. If
6 the stipulation and payment of the proposed administrative penalty
7 are not received within 45 days, the commissioner or the secretary
8 may file a certified copy of a final decision that directs the payment
9 of ~~a civil~~ *an administrative* penalty with the clerk of the superior
10 court of any county. Judgement shall be entered immediately by
11 the clerk in conformity with the decision. No fees shall be charged
12 by the clerk of the superior court for the performance of any official
13 service required in connection with the entry of judgment pursuant
14 to this section.

15 ~~SEC. 5.~~

16 ~~SEC. 7.~~ Section 27585 is added to the Food and Agricultural
17 Code, to read:

18 27585. If an administrative hearing is requested pursuant to
19 Section ~~27581.2~~ 27583.2 or ~~27583~~, 27583.4, a final decision and
20 order shall be made by either the secretary or commissioner, as
21 applicable, within 60 days of the conclusion of the hearing. The
22 order shall be mailed to the respondent, and any penalty imposed
23 shall be due and payable within 45 days of the postmark of the
24 order.